IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6311 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY. EXECUTIVE ENGINEER

Versus

CHHAGANBHAI JAVANBHAI PAGI

Appearance:

1. Special Civil Application No. 6311 of 1994

GOVERNMENT PLEADER for Petitioner No. 1

MR NILESH M SHAH for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/2002

ORAL JUDGEMENT

Heard Mr.M.K.Patel, learned AGP appearing on behalf of the petitioner and Mrs.D.T.Shah, learned advocate for respondents.

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#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Godhara dated 18th November, 1993 in Reference No.37 / 1989 [New No.622 / 92]. The labour court has granted reinstatement to these two workmen with continuity of service and full backwage of interim period and full backwages shall calculate by the department on the basis of 26 working days.

#. Learned AGP Mr.M.K.Patel has raised contention before this Court that services of these two workmen respondents herein were not terminated by the department and they have at their own stopped coming to duty. It is contended that the respondents were dailywagers not completed 240 days continues service during the period of twelve months and project viz. Bhadar Canal Sub Division, where these two workmen were working was already closed on 15th September, 1986 and therefore, the labour court has committed gross error in granting reinstatement with full backwages to the respondents workmen.

#. Learned advocate Mrs.D.T.Shah appearing on behalf of the respondents has submitted that sufficient evidence came on the record from both these workmen - respondents herein that they services were terminated by the department by oral order and at the time of termination each workman had completed 240 days continues service, even though, Section 25[F] of the I.D.Act has not been followed by the department. She also submitted that the petitioner has not produced any documentary evidence before the Labor Court in respect of working days of each respondent. She also submitted that Bhadar Canal Sub Division has been closed down on 15th September, 1986, for which, no evidence is produced by the petitioner before the labour court and no such contention was raised by the department before the Labour Court. She also submitted that in case if these two respondents remained absent and not reported for work according to the case of the department, no further procedure has been followed by the department to call the respondents on duty. No notice has been given to any of the respondents and therefore, the labour court has rightly granted reinstatement with full backwages. She also submitted that the Advocate appearing on behalf of the petitioner before the Labour Court has suggested to the labour court to grant backwages on the basis of 26 working days, meaning thereby, that there was some suggestions from the Advocate appearing on behalf of the department.

Therefore, according to her, present petition requires to be dismissed.

#. This Court has issued RULE returnable 5th September, 1994 and ad-interim relief in terms of Para-9[B] granting qua backwages between July 1989 to 6th January, 1993 only and no stay has been granted against reinstatement by order dated 4th May, 1994. In the result, both the learned advocates had agreed to the fact that after this order, both the respondents have been taken back in service by the petitioner and at present they are working with the petitioner.

#. I have considered submissions made by the learned advocates for the parties. Before the labour court, the workmen filed statement of claim vide Exh.7, wherein it was mentioned that they were in service with effect from 21st February, 1983 to 21st August, 1987 and on that day, their services came to be terminated. The petitioner has filed reply vide Exh.9. Thereafter, the workman Chhaganbhai Javanbhai Pagi and Somabhai Abhabhai Pagi were examined at Exh.11 and 12 respectively. The petitioner thereafter examined one witness Navinchandr Parshotamdas Shah at Exh.15. No documentary evidence has been produced by the petitioner as well as by the respondents before the labour court. The labour court has examined the merits on the basis of the oral evidence produced by the parties and come to the conclusion that both the workmen remained continued in service for a period from 21st February, 1983 to 25th August, 1987. Therefore, they have completed 240 days continues service. That land belonged to the respondents were acquired by the Government for Bhadar Canal project and on this basis, the respondents workmen were appointed as daily wagers in the Bhadar Canal Sub Division. Both the workmen deposed before the labour court that after termination, they remained unemployed and they were not gainfully employed during the interim period. It is undisputed between the parties that at the time of termination, the petitioner has not complied with provisions of Section 25-F of the I.D.Act, 1947. The labour court has observed in the award that on the basis of the oral evidence of both the parties, it is proved that each respondent has completed continuous service of 240 days. However, this fact has been corroborated by the evidence of the witness of the petitioner vide Exh.15. The labour court has also observed that the petitioner has failed to prove that the respondents had not completed 240 days continues service because the petitioner has not produced any documentary evidence namely Muster Roll and pay register in respect of workmen

concerned. In light of the oral evidence led before the labour court and non production of any documentary evidence rebutting the evidence of the workmen concerned, the labour court has believed the evidence of the workmen and come to the conclusion that each respondent has completed 240 days continuous service with the petitioner and at the time of termination, Section 25-F has not been complied with. Therefore, the labour court has set aside the termination order and granted reinstatement to the respondents. However, for coming to the conclusion, the labour court has taken into consideration certain decisions of the Hon'ble Apex Court. According to learned AGP Mr.M.K.Patel that services of these workmen were not terminated by the department and they had at their own stopped attending the work and therefore there is no need to comply provisions of Section 25-F of the I.D.Act, 1947. But the fact remains that these workmen were in service for a period from 21st February, 1983 to 25th August, 1987. In case, if the services of these workmen were not terminated, in that circumstances, the department must have followed some procedure to call the workmen concerned to resume the duty. But no such procedure has been followed by the department and there was no such evidence produced by the department before the Labour Court. Therefore, in above set of facts, according to my opinion, the labour court has rightly set aside the termination order on the basis of the material on record and granted reinstatement with continuity of service and the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. Learned AGP Mr.M.K.Patel has also raised contention that the labour court has committed gross error in granting full backwages to the daily wagers because termination in both cases is related to the year 1986-87 and the dispute which was referred for adjudication to the concerned labour court on 21st January, 1989. Therefore, there was delay in raising the industrial dispute by the workmen and consequently, the respondents are not entitled to any amount of backwages for such interim period. He also raised contention that a daily wager is not supposed to get work or entitled to work for the entire month but some time they may not get the work for whole month and therefore, to grant full backwages to daily wagers in light of the facts that they were working as daily wager is an clear error committed by the labour court and the same required to be rectified by this Court. However, Mr.Patel, learned AGP has relied upon statement - Annexure-B at pg.26-27 wherein details of

working days, has been shown by the department in respect of both the respondents and he submitted that on the basis of the said statement, in each month the respondents were not getting complete work for whole month and therefore, they are not entitled to any amount of backwages for interim period. He also submitted that looking to this statement - Annexure-B produced on Page-26 in respect of Shri Chhaganbhai Javanbhai Pagi, who has not completed 240 days within period of twelve months but he has completed 190 days only and thereafter another 59 days in the year 1983-84 and thus, in all, he has completed 249 days. Therefore, the workman concerned has not completed 240 days continues service. In respect of the other workman Shri Somabhai Abhabhai Pagi who has completed 251 days continues service during the period of twelve months. However, he submitted that in a period of twelve months, the workman concerned had remained absent atleast for a period of two months.

#. To support submission made by learned AGP Mr.M.K.Patel, reliance is placed on these two statements showing working days of the workmen concerned vide Annexure-B at Pg.26-27. However, a pertinent querry is put by this Court before learned AGP Mr.M.K.Patel whether these documents showing working days of the workmen concerned were produced before the labour court concerned by the petitioner or not ? In reply, learned AGP Mr.Patel fairly admits that these documents were not produced on record before the labour court by the petitioner. Therefore, these documents cannot be relied upon by this Court when the same is produced for the first time before this Court while examining the legality and validity of the award in question. However, considering the fact that both the respondents were working as Daily wager and there was delay in raising the industrial dispute as well as the fact after the order passed by this Court on 4th May, 1994, both the workmen have been reinstated by the petitioner, therefore according to my opinion, the award passed by the labour court requires to be modified. The respondents workmen are not entitled to any amount of backwages from the date of termination till the date of Reference i.e. 21st January, 1989. Therefore, it is ordered that both the respondents are entitled to 50 % backwages of interim period from 21st January, 1989 to till the date of award i.e. 18th November, 1993. Accordingly, the award passed by the labour court, Godhara in Reference No.37 / 1989 [New No.622 / 94] dated 18th November, 1993 is modified accordingly. Rule is made absolute to the extent indicated hereinabove. No order as costs. However, it is made clear that rest of directions issued by the

Labour Court granting reinstatement with continuity of service will remain intact and not disturbed by this Court.

#. Learned advocate Mrs.D.T.Shah appearing on behalf of the respondent workman has submitted that as the award is modified by this Court, some suitable directions may be issued on the petitioner so that they may pay 50 % backwages to both the workmen within some reasonable time. Learned AGP Mr.M.K.Patel submits that some considerable time may be stipulated for implementing the directions as modified above by this Court. Considering above submissions, it is directed to the petitioner to pay backwages as directed by this Court within period of three months from the date of receipt of certified copy of this order.

Date : 11-10-2002 [H.K.Rathod, J.]
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